

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's own motion into all facilities-based cellular carriers and their practices, operations and conduct in connection with their siting of towers, and compliance with the Commission's General Order No. 159.

Investigation 92-01-002  
(Filed January 10, 1992)

**ADMINISTRATIVE LAW JUDGE'S RULING  
PROPOSING CLOSURE OF DOCKET**

This ruling proposes the closure of this docket, which is nearly 11 years old and has been inactive for some time. Any party objecting to this course of action is invited to file comments setting forth the reasons for its opposition.

**Background**

The General Order (GO) with which this investigation is concerned, GO 159, was promulgated in Decision (D.) 90-03-080 and took effect on March 28, 1990. Under the "Standard Review Procedure" of GO 159 that was in effect until the general order was amended in 1996, once a cellular carrier had received a certificate of public convenience and necessity for its initial system,<sup>1</sup> responsibility for environmental review of proposed new sites shifted from this Commission to the local agency (or agencies) having jurisdiction over the site.

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<sup>1</sup> Under the Omnibus Budget Reconciliation Act of 1993, this Commission lost jurisdiction to issue certificates of public convenience and necessity to providers of wireless telecommunications services. The 1993 Act also preempted our authority to engage in rate regulation of commercial mobile radio service providers. However, the *siting* of cellular facilities was one of the "terms and conditions" reserved to the States under the 1993 Budget Act.

After these agencies had issued the necessary permits, the carrier filed an advice letter (AL) with the Commission stating that it had all the necessary permits in hand and had complied with all applicable regulations and wished to begin construction. The carrier was free to begin construction once we had issued a resolution approving the AL. In the alternative, the carrier was free to begin construction after filing the AL, but before our approval, if the carrier filed a letter of undertaking stating that it would remove the new facility in the event the AL was disapproved.

The Order Instituting Investigation (OII) that commenced this proceeding alleged that in many cases, the requirements of GO 159 had not been complied with. The OII stated:

“CADC staff have identified three cellular utilities which it believes have had a pattern of constructing their cellular towers prior to filing an AL with the Commission. Furthermore, in a number of cases, where sites were constructed prior to and during the AL process, the required undertakings were not provided. None of these companies informed the Commission that the sites had in fact been constructed prematurely until Commission staff began to directly question the companies. Therefore, the staff believes that some of the AL filings have misrepresented the status of the cellular sites.” (OII, p. 3.)

In order to investigate this situation, the Commission made all of the facilities-based carriers respondents in the proceeding and ordered them to make two sets of filings. The first filing required paperwork for any construction a carrier had ever undertaken on any site; the second required paperwork for sites on which an AL was pending on the date of issuance of the OII, but as to which construction had begun prematurely. In the Spring of 1992, the respondent carriers made the required filings.

After several months of reviewing the filings, the Advocacy Staff of the Commission Advisory and Compliance Division (CACDA)<sup>2</sup> issued an Interim Status Report (ISR) on November 25, 1992. The ISR listed on a site-by-site basis CACDA's allegations about probable GO 159 violations committed by various carriers. Pursuant to a ruling issued by the undersigned, several carriers submitted responses to the ISR on February 17, 1993. These carriers also participated in a prehearing conference intended, among other things, to find ways of narrowing the very substantial gap that existed between CACDA and the carriers over how certain provisions of GO 159 should be interpreted.

At the Commission's April 7, 1993 meeting, a new phase of the OII began. On that date, the Commission issued six Orders to Show Cause (OSCs) why four of the respondent carriers should not be found to have violated GO 159 with respect to their activities at six specific sites. In D.94-11-018, as modified by D.94-12-007, the Commission issued its findings and conclusions with respect to the sites covered by the OSCs.<sup>3</sup>

The Commission has also approved three settlement agreements in connection with this investigation. In D.93-09-075, 51 CPUC2d 20 (1993), the Commission approved a settlement between CACDA and McCaw Cellular Communications, Inc. under which McCaw agreed to pay \$145,000 over a three-year period. In D.94-11-019, 57 CPUC2d 250 (1994), the Commission approved a

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<sup>2</sup> CACDA was the first entity within the Commission to represent the staff in connection with this investigation. In June 1995, the Safety and Enforcement Division (S&E) assumed responsibility for the investigation. In the Fall of 1996, the Consumer Services Division (CSD) succeeded to S&E's responsibilities for conducting the investigation. In this ruling, references will be to the staff entity that took action on a particular date.

<sup>3</sup> One of the respondents in the OSCs, GTE Mobilnet, applied for rehearing of D.94-11-018. Rehearing was denied in D.97-12-115, 78 CPUC2d 212 (1997).

substantially more complex settlement agreement between CACDA and the Los Angeles Cellular Telephone Company (LACTC) under which LACTC agreed to (1) pay \$4.37 million over a three-year period, (2) submit to an audit of its GO 159 compliance with respect to all of the sites covered by this investigation, and (3) either cure or tear down facilities found not to comply. Finally, in D.97-12-083, 77 CPUC2d 390 (1997), the Commission approved a settlement between CSD and GTE Mobilnet Incorporated (GTEM) pursuant to which GTEM agreed to pay \$800,000, submit to an audit of its GO 159 compliance by an independent consultant, and cure any deficiencies found in the audit.

### **Discussion**

In the nearly five years since the GTEM settlement (D.97-12-083) and rehearing (D.97-12-115) decisions were issued, there has been no further activity in this docket. Not only have further settlements not been submitted for the Commission's consideration, but there has been a great deal of consolidation within the cellular industry.

Moreover, the provisions in GO 159 that originally gave rise to this investigation are no longer in effect. In D.96-05-035, 66 CPUC2d 257 (1996), the Commission adopted amendments to GO 159 that left the issue of whether necessary permits had been obtained to local permitting authorities, did away with the requirement that cellular carriers obtain a Commission resolution before commencing construction, and adopted an arbitrator's role for the Commission in the event of conflict between a carrier and local authorities. Since the adoption of these amendments (which were promulgated as GO 159-A), there have been few disputes about the adequacy of the permitting for new cellular facilities.

In light of these developments, I believe this docket has served its purpose and should be closed. However, if any party is opposed to this course of action and wishes to present reasons why the docket should remain open, the party

may file comments setting forth its reasons for this position. Any such comments should be filed and served no later than October 15, 2002, and should also be served electronically on the undersigned at mck@cpuc.ca.gov.

In accordance with the discussion above, **IT IS RULED** that:

1. Any party who is opposed to closing this docket shall file and serve comments, no later than October 15, 2002, setting forth the reasons for its opposition.
2. In addition to serving such comments on all parties on the service list, any party filing such comments shall serve them electronically on the undersigned at mck@cpuc.ca.gov.

Dated September 27, 2002, at San Francisco, California.

/s/ A. KIRK MCKENZIE

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A. Kirk McKenzie  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Proposing Closure of Docket on all parties of record in this proceeding or their attorneys of record.

Dated September 27, 2002, at San Francisco, California.

/s/ TERESIT GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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